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6 Attorney for Objector  
Deborah Colburn

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12  
13 In re: HP INKJET PRINTER ) Master File No. C05-3580 JF  
LITIGATION )  
14 )  
15 ) OBJECTION TO PROPOSED  
16 ) SETTLEMENT  
17 )  
18 ) Date: January 28, 2011  
19 ) Time: 9:00 a.m.  
20 )

21 COMES Deborah Colburn ("Objecting Class Member") by her  
22 counsel of record, Steve A. Miller, and does file this her  
23 Objection to the proposed settlement and alleges in support  
24 thereof as follows:  
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26 **INTRODUCTION**  
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1        1. The critical and helpful role of objectors in class  
2 litigation has been discussed in detail in case law and by  
3 learned commentators. As has been documented repeatedly in  
4 case law, the objective of the fairness hearing is to  
5 protect the interests of absent class members - not the  
6 named parties and their counsel in the case. While the law  
7 normally requires notice of a lawsuit and an opportunity for  
8 hearing before any person may be bound by a court's  
9 judgment, applicable law clearly provides however that in  
10 class actions the judgment ". . . whether or not favorable  
11 to the class, shall . . . be binding upon all those whom the  
12 Court finds to be members of the class." Regardless, the  
13 United States Supreme Court has made it clear that due  
14 process requires in all class action settlements that  
15 objecting Class Members be given sufficient standing so as  
16 to participate at the fairness hearing, *Phillips Petroleum*  
17 *Co. v. Shutts, et al*, 472 U.S. 797, 105 S. Ct. 2965 (1985).

22        2. As noted in *Mars Steel Corp. v. Continental Ill.*  
23 *Nat'l Bank & Trust Co.*, 834 F.2d 677, 680-81 (7<sup>th</sup> Cir. 1987),  
24 in a class action, the absentee members of the class may not  
25 have even learned of the case until a tentative settlement  
26 has been struck on their behalf by the defendant and class  
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1 counsel. When notice of a proposed settlement and notice of  
2 the class action are sent simultaneously, the absent class  
3 members may perceive it as a *fait accompli*. The potential  
4 for conflict of interest under these circumstances is  
5 substantial and to some extent unavoidable. For these  
6 reasons, the role of the objecting class member is critical  
7 in assisting the Court in ensuring the fairness of the  
8 settlement, even if the objectors are only few in number.

#### 11 CLASS COUNSELS' FEES

12 3. Your Objector opposes the Attorneys' fees to class  
13 counsel. In the present case, class members are getting  
14 miniscule "benefits" while class counsel expects to reap  
15 millions. Addressing this situation, during the last  
16 decade, legal scholars have expressed growing concern about  
17 the conflicts that may arise between the class and its  
18 counsel: "These attorneys are not subject to monitoring by  
19 their putative clients, they operate largely according to  
20 their own self interests, subject only to whatever  
21 constraints might be imposed by bar discipline, judicial  
22 oversight, and their own sense of ethics and fiduciary  
23 responsibilities." Johnathan R. Macey & Geoffrey P. Miller,  
24 The Plaintiffs' Attorney's Role in Class Action and  
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1 Derivative Litigation, 58 U.CHI.L.REV. 1, 7-8 n.4(1991); see  
2 also John C. Coffee, Jr., Rethinking the Class Action, 62  
3 IND.L.J. 625, 628-29 (1987) (listing several factors that  
4 have contributed to "entrepreneurial" class action  
5 litigation, including the relatively low cost of filing  
6 dubious class action suits, the large amounts Defendants are  
7 willing to pay in fees to settle these suits and the  
8 incentive for class counsel to invest little time or effort  
9 in protecting the absent class members), John C. Coffee,  
10 Jr., The Regulation of Entrepreneurial Litigation: Balancing  
11 Fairness and Efficiency in the Large Class Action, 54  
12 U.CHI.L.REV. 877, 878, 878-79 (1987) (outlining proposed  
13 rule changes that would "manipulate the incentives that the  
14 law holds out so as to motivate" class counsel to defend the  
15 absent class members as they would any other client).  
16 Kenneth W. Dam, Class Actions: Efficiency, Compensation,  
17 Deterrence, and Conflict of Interest, 4 J.LEGAL STUD. 47, 61  
18 (1975) (coining the phrase "lawyer-entrepreneur" in  
19 reference to class counsel).

20 4. Judge Posner, in his Richard A. Posner, An Economic  
21 Analysis of Law, at 570 (4<sup>th</sup> ed. 1992), noted:

22 [T]he absence of a real client impairs the  
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1 incentive of the lawyer for the class to  
2 press the suit to a successful conclusion.  
3 His earnings from the suit are determined  
4 by the legal fee he receives rather than  
5 the size of the judgment. No one has an  
6 economic stake in the size of the judgment  
7 except the defendant, who has an interest  
8 in minimizing it. The lawyer for the  
9 class will be tempted to offer to settle  
10 with defendant for a small judgment and a  
11 large legal fee, and such an offer will be  
12 attractive to the defendant, provided the  
13 sum of the two figures is less than the  
14 defendant's net expected loss from going  
15 to trial. Although the judge must approve  
16 the settlement, the lawyers largely  
17 control his access to the information-  
18 about the merits of the claim, the amount  
19 of work done by the lawyer for the class,  
20 the likely damages if the case goes to  
21 trial, etc. - that is vital to determining  
22 the reasonableness of the settlement.

### 23 OBJECTORS' ROLE

24 5. The potential for abuse of the class action  
25 procedure points out the importance of the trial court's  
26 obligation, with the assistance of objecting class members,  
27 to determine that the protective requirements of Rule 23 are  
28 met when it approves a class action settlement. While the  
court generally plays a relatively detached role in most  
civil proceedings, in a class action the court is the  
guardian of the class interest. *Weinberger v. Kendrick*,  
698vF.2d 61, 69 n. (2d Cir. 1982), cert. denied, 464 U.S.

1 818, 104 S. Ct. 77, 78 L.Ed. 2d 89 (1983); *In re "Agent*  
2 *Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir.),  
3 cert. denied, 484 U.S. 926, 108 S. Ct. 289, 98 L. Ed. 2d 249  
4 (1987); *In re Corrugated Container Antitrust Litig.*, 643 F.2d  
5 195, 225 (5<sup>th</sup> Cir. 1981), cert. denied, 456 U.S. 998, 102 S.  
6 Ct. 2283, 73 L. 2d 1294 (1982); *Piambino v. Bailey*, 610 F.2d  
7 1306, 1327 (5<sup>th</sup> Cir.), cert. denied, 449 U.S. 1011, 101 S.  
8 Ct. 568, 66 L. Ed. 2d 469 (1980); 2 NEWBERG & CONTE, § 11.41,  
9 AT 11-93 TO 11-94, The trial court therefore bears the  
10 burden under Rule 23 to police the proceedings to minimize  
11 conflicts of interest and, primarily, to protect absent class  
12 members:  
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15  
16 The drafters designed the procedural  
17 requirements of (class action law) . . . ,  
18 so that the court can assure, to the  
19 greatest extent possible, that the actions  
20 are prosecuted on behalf of the actual  
21 class members in a way that makes it fair  
22 to bind their interest. The rule thus  
23 represents a measured response to the  
24 issues of how the due process rights of  
absentee interests can be protected and  
how absentees' represented status can be  
reconciled with a litigation system  
premised on traditional bipolar  
litigation.

25 *In re General Motors Corp.*, 55 F.3d at 785.

26 6. In simplest terms, the critical role of the Court,  
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1 joined by objectors, with regard to class settlement review  
2 is to act as guardian for absent class members in assuring  
3 the settlement is fair, adequate and reasonable. If in fact  
4 the settlement is fair, adequate and reasonable in all  
5 aspects, the Court, the Defendant and class counsel should  
6 welcome the presence of class members who did not participate  
7 in the discovery and settlement procedures in their role of  
8 further assuring the settlement meets the criteria of  
9 applicable law.

12 7. Typically, however, class counsel and the Defendant  
13 do everything possible to minimize the role of any would-be  
14 objector. Class counsel and Defendant's counsel must be  
15 aware that most individuals in a class settlement cannot  
16 afford and will not go to the effort to seek legal counsel  
17 even if they are greatly dissatisfied with the proposed  
18 settlement. Through these procedures class counsel and  
19 Defendant's counsel can totally control the settlement  
20 hearing and virtually exclude the Court from hearing class  
21 members about any matters that the court might need to  
22 consider from the standpoint of the average consumer.

26 8. The role of objectors therefore in class actions is  
27 critical in assuring that the proposed settlement is fair,  
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1 adequate and reasonable, and even allowing Objectors' counsel  
2 to do additional discovery serves only to benefit the Court  
3 in its rigorous analysis. *Castano v. American Tobacco Co.*,  
4 84 F.3d 734. To do otherwise would only benefit the very  
5 types of abuses that concern the preeminent legal scholars  
6 cited herein who have presented learned studies with regard  
7 to the unavoidable conflict of interest between class counsel  
8 and absentee members of the class.  
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11 9. Furthermore, "when a Court evaluates the settlement  
12 of a class action brought on behalf of the individual  
13 shareholders or consumers, it should be reluctant to rely  
14 heavily on the lack of opposition by alleged Class Members.  
15 Such parties typically do not have the time, money or  
16 knowledge to safeguard their interests by presenting evidence  
17 or advancing arguments objecting to the settlement." *In re*  
18 *General Motors Corp. Engine Interchange Litigation*, 591 F.2d  
19 1106, at 1137 (1979). In the present case, it is expected  
20 that the proponents of the settlement will argue that there  
21 are relatively few Objectors. This is immaterial. Most  
22 class members do the typical thing when they receive a Class  
23 Action Notice - they either do not understand the notice or  
24 ignore it. The Court is urged not to consider the few  
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1 Objectors to subject settlement as being supportive that the  
2 settlement should be approved as it is presently submitted.

3  
4 **NO REAL CLASS BENEFIT**

5 10. The specific faulty terms in the present case  
6 cannot coexist with applicable law mandating that the  
7 proposed settlement is neither fair, adequate nor reasonable.

8 11. The subject settlement is an obvious negotiation of  
9 a case to make it go away rather than to be fair to class  
10 members. A review of the subject settlement over the  
11 internet in various chat rooms, blogs and websites discloses  
12 the pervasive critical remarks pertaining to same (See  
13 Attachment A). There is no one that is in favor of this  
14 settlement other than the settling attorneys. Hopefully the  
15 Court will not agree to accept the subject settlement when  
16 all class members are virtually irate about a class action  
17 attorney sell-out to get fees and end a case.

18 12. It is obvious there are monumental problems with HP  
19 printer cartridges. There is strong evidence to the effect  
20 that the printer cartridges subject of this litigation are a  
21 sham and have been engineered to cause a growth in sales. It  
22 is customary in the industry that in the office supply  
23 business, printer cartridges is the driving force for income.  
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1 It is common knowledge that HP will virtually give away  
2 printers so that they can sell more print cartridges.  
3 Apparently HP has sold not only poor printers but also have  
4 manipulated their print cartridges and the software  
5 respecting the print function to increase sales. Surely  
6 class counsel did not file subject lawsuit with the  
7 expectation that the case was not provable. Hence, it is  
8 anticipated that the success of said lawsuit would be  
9 anticipated and to give the miniscule coupons to the class  
10 members is only a marketing ploy and not anything of benefit  
11 to the class itself. The only winners in this case are the  
12 class attorneys and the Defendant.

13 13. As shown on Attachment A, the overwhelming  
14 sentiment of the class is in opposition to this settlement.  
15 The settling parties are challenged to find like remarks by  
16 any significant members of the class who would be in favor of  
17 subject settlement. Virtually all HP cartridge users are  
18 against the subject settlement.

19 14. There have been other settlements similar to this  
20 subject case. Epson was sued as per the Attachment B which  
21 shows that it also was challenged on similar wrongdoing as HP  
22 is in the present case. In the Epson case as can be seen on  
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1 the enclosed, Epson paid ten times more per class member than  
2 HP is now escaping with by merely providing coupons. The fact  
3 of the matter is the miniscule coupons going to class members  
4 in the present case would only amount to a very nominal  
5 discount which would in effect be essentially the same  
6 discount a class member would get by reading the Sunday  
7 newspaper and clipping coupons. In effect, HP will not  
8 suffer any consequence except for the cost of administration  
9 of this case, its own attorneys' fees and paying class  
10 counsel. Everyone is a winner but class members.

13 **COUPON SETTLEMENT FORBIDDEN**

14 15. Furthermore, and more importantly, the potential  
15 benefits to class members are illusory and based on a format  
16 which is now discouraged by virtually all courts as being  
17 grossly unfair and inadequate; i.e., this is nothing more  
18 than a promotional or coupon settlement condemned by the  
19 Class Action Fairness Act ("CAFA") and all other authority on  
20 the subject. This case is a "poster child" of coupon  
21 settlements and possesses precisely the types of features  
22 that characterize improper (and collusive) coupon-based  
23 class action settlements. See generally Christopher R.  
24 Leslie, "A Market Based Approach to Coupon Settlements in  
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1 Antitrust and Consumer Class Action Litigation", 49 UCLA L.  
2 Rev. 991 (2002) [hereinafter "Leslie, Coupon Settlements"].

3  
4 16. Professor Leslie explained the general dilemma  
5 posed by improper coupon-based settlements that are designed  
6 to benefit the defendants and class counsel (through  
7 exorbitant fees), all to the detriment of class members:

8  
9 Class action litigation is supposed to  
10 protect members of society by allowing  
11 them to aggregate claims that are too  
12 small to litigate individually. The class  
13 action device insures access to courts for  
14 all Americans so that even people with  
15 small injuries can receive due  
16 compensation. Class action litigation  
17 should serve the public good, both by  
18 compensating individual class members and  
19 by disgorging ill-gotten gains from  
20 defendants. Unfortunately, the class  
21 action vehicle **has been hijacked in many**  
22 **lawsuits.** Defendants take advantage of  
23 the class action rules **to eliminate future**  
24 **lawsuits while providing little, or no,**  
25 **meaningful compensation to the class**  
26 **members.** Coupon-based settlements  
27 illustrate how defendants have structured  
28 class action settlements to maximize the  
gains for the corporate defendant while  
minimizing any compensation to the class.  
Indeed, given the restrictions imposed on  
settlement coupons, in some cases a  
coupon-based settlement may actually  
increase a defendant's net profits.

25 See Leslie, Coupon Settlements, at 993-94 (emphasis added).

26 17. Class Counsel and Defendants cannot in good faith  
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1 deny that the Proposed Settlement is a coupon-based /  
2 promotional settlement given the terms of the purported  
3 "benefits" to Class Members. Prof. Leslie continues:

4  
5 In an effort to facilitate settlements in  
6 class action litigation, business  
7 defendants and class counsel have  
8 structured settlements so that defendants  
9 eliminate their legal liability in  
10 exchange for issuing coupons to class  
11 members **redeemable for savings on a**  
12 **subsequent purchase to the defendants**  
13 **goods or services.** Such a coupon-based  
14 settlement exists whenever a defendant  
15 pays the plaintiff class members, in whole  
16 or in part, with coupons as opposed to  
17 cash...Coupon-based settlements take many  
18 forms. Such settlements go by several  
19 names: in-kind settlements, script  
20 settlements, and coupon settlements. Some  
21 class action settlements are paid  
22 exclusively in coupons, while others  
23 combine cash and coupons. Settlement  
24 coupons may resemble traditional  
25 promotional coupons, housing vouchers, or  
26 discount contracts. Settlement coupons are  
27 sometimes structured as an absolute dollar  
28 discount, or as a percentage off of the  
retail price. In some cases, class members  
receive coupons that may be redeemable for  
an amount of cash set lower than the face  
value of the coupon.

See Leslie, Coupon Settlements, at 993-94 (emphasis added).

18. Class counsel, not knowing the extent of the "take  
rate", is requesting that this Court approve an exorbitant  
fee of millions of dollars without any evidence of the

1 actual benefit that will ultimately be received by the  
2 class. Said procedure is contrary to current class action  
3 practice. *In re Compact Disc Litigation*, 292 F. Supp. 2d  
4 184 (D. Me. 2003).

6 19. As further stated in, *Leslie, Coupon Settlements*,  
7 at 994-95 (emphasis added):

8 Although coupon-based settlements may at  
9 first appear to be a reasonable mechanism  
10 to compensate class members, coupons are  
11 in fact often worthless despite their  
12 deceptively high face value. In many  
13 cases, the coupons are **laden with**  
14 **restrictions intended to make redemption**  
15 **difficult**. Class counsel do not prevent  
16 these value-reducing restrictions in  
17 settlement coupons because the attorneys  
18 are paid in cash, while judges usually  
19 focus on the face value of the coupons,  
20 not the restrictions on their use. Indeed,  
21 a coupon settlement may sometimes  
22 facilitate or indicate **collusion between**  
23 **the class action defendant and the class**  
24 **counsel**. In many cases, the class counsel  
25 appear to sell out the interests of the  
26 class in exchange for relatively generous  
27 attorneys' fees. While this represents a  
28 win-win scenario for the class counsel and  
the defendant, many class members are left  
uncompensated.

23 20. The total value of the settlement is not even  
24 specified. Further, Objectors contend that the value of the  
25 settlement cannot be fairly determined until all benefits  
26 have been distributed to the class. For that reason, no  
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1 attorney fees should be awarded until a value is ascertained  
2 based upon what the class actually receives, and any final  
3 award of attorney fees should be based on the actual value  
4 of benefits received by class members, not some opined  
5 purported maximum value supposedly available to class  
6 members. *In re Compact Disc Litigation*, 292 F. Supp. 2d 184  
7 (D. Me. 2003).  
8

9  
10 21. Your Objectors adopt any other bona fide objections  
11 by other Class Members.

12 22. Hence, for all the forgoing reasons, Objectors  
13 respectfully submit that the terms of the Proposed  
14 Settlement are unfair, unjust, unreasonable and inadequate  
15 to the absent Class Members.  
16

17 23. The objectors information is as follows:

18 Name: Deborah K. Colburn  
19 Address: 101 Mohawk Drive, Trussville, AL 35173  
20 Phone Number: 205-305-1757  
(Signature of attorney suffices)

21 None of the settling parties or their attorneys are to  
22 contact this class member. Said class member is represented  
23 by counsel and contacting said class member is a breach of  
24 ethics. The undersigned hereby serves notice that he expects  
25 to attend the hearing and present the position of your  
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1 Objector, Ms. Colburn. Said presentation should take no  
2 longer than 20 minutes.

3  
4 **CONCLUSION**

5 **WHEREFORE,** having demonstrated the unfairness,  
6 inadequacy and unreasonableness of the Proposed Settlement,  
7 the Objectors request appropriate general relief as follows:

8 1. That the Court not approve the settlement as  
9 proposed.

10 2. That the attorneys' fees requested be denied.

11 3. That the Court at a minimum delay final approval of  
12 any attorneys fees until the claims process is complete and  
13 then only allow such attorneys fees as are fair and  
14 reasonable under the circumstances.

15 4. That the Court enter such other further Orders as  
16 may be necessary and just, so as to effect substantial  
17 justice in this cause between the parties and the absent  
18 Class Members.

19 Dated: January 3, 2011 Respectfully Submitted,

20 By: /s/Steve A. Miller  
21 Steve A. Miller



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Objection has been served upon all counsel of record, and to the following, via CM/ECF or separate e-mail on January 3, 2011:

**Settlement Administrator**

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